

BISBEE VOGUE INC. AGREEMENT 2017

THIS AGREEMENT is by and between the County of Cochise, a political subdivision of the State of Arizona, hereinafter called the "COUNTY", and Bisbee Vogue, Inc., a nonprofit corporation organized under the laws of Arizona, hereinafter called the "SPONSOR".

RECITALS

WHEREAS, the SPONSOR is sponsoring the Bisbee 1000 Stair Climb, hereinafter called "THE EVENT", to be held Saturday October 21, 2017; and

WHEREAS, the "Event" will take place, in part, on the Superior Courthouse steps, plaza and lawn area, and in COUNTY parking lots surrounding the Courthouse and the Administration Building in Bisbee (the "COUNTY PREMISES"), it is understood by all parties that the COUNTY does not own or have a current lease on the parking lot between the Courthouse and the Administration Building and so the COUNTY cannot give permission to use that particular lot; and

WHEREAS, preparation and clean-up for the event, including placement of temporary restroom facilities, may commence on the morning of Friday, October 20, 2017, and conclude on the afternoon of Sunday, October 22, 2017.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

A. DUTIES OF THE PARTIES

1. It shall be the sole responsibility of the SPONSOR to undertake any inspection or preparation of the COUNTY PREMISES required for the EVENT.

2. The SPONSOR agrees to fully perform, at the SPONSOR's sole expense, all support activities in conjunction with the conduct of the EVENT including, but not limited to, placement and removal of portable restroom facilities at the parking lot between St. Patrick's Church, the Courthouse, and the old convent building (currently

COUNTY Attorney Civil Division Office), clean up of the COUNTY PREMISES after the EVENT, and procurement and placement of traffic control signs and devices in and around COUNTY PREMISES, which are necessary to warn, regulate or guide traffic during the conduct of the EVENT and the removal of such signs and devices following the conclusion of the EVENT.

B. INDEMNITY REQUIREMENTS

The SPONSOR shall defend, indemnify, save and hold harmless the COUNTY, its officials and employees without limitation from and against any and all claims (including, but not limited to, workers' compensation, disability or environmental liability claims), damages, losses, liabilities, fees, fines or expenses (including but not limited to attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen or resulted from the Event. SPONSOR's duty to defend, indemnify, save and hold harmless the COUNTY, its officials and employees shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including the loss of use therefrom, or environmental claims and fines, caused in whole or in part by any act, error, mistake or omission of SPONSOR, its officers, officials, employees, members, guests, invitees, participants, agents, vendors, subcontractors or anyone for whose acts SPONSOR may be liable.

The insurance, its limits, amount and type required herein shall in no way be construed as limiting the scope of this indemnity.

C. INSURANCE REQUIREMENTS

The SPONSOR, at SPONSOR's own expense, shall purchase and maintain the hereinafter stipulated minimum insurance with companies, possessing a current AM Best, Inc. rating of A VII, duly licensed in the State of Arizona.

The COUNTY in no way warrants that the minimum insurance and limits contained herein are adequate or sufficient to protect the SPONSOR, its officers, officials, employees, members, guests, invitees, participants or spectators.

Thirty (30) days prior to the Event, the SPONSOR shall provide the COUNTY with a Certificate of Insurance evidencing the insurance required by the COUNTY. The certificate shall identify this Event and be directly sent to the Civil Division of the County Attorney's Office, P.O. Drawer CA, Bisbee, Arizona 85603. Failure to do so, at the COUNTY's sole discretion, may constitute a material breach of this Agreement and grounds for its immediate termination, cancellation or suspension.

The SPONSOR's insurance or self-insurance shall be primary and any insurance maintained by the COUNTY shall not contribute to, or be excess of, the SPONSOR's insurance or self-insurance.

The SPONSOR's insurance or self-insurance shall contain a waiver of rights of recovery or subrogation against the COUNTY, its officials and employees for any and all claims, damages, losses, liabilities or expenses relating to, arising from, resulting from, or alleged to have arisen or resulted from, the Event.

The SPONSOR's insurance or self-insurance, except workers' compensation, required herein shall name the COUNTY, its officials and employees as Additional Insureds.

General Liability Insurance: General Liability insurance of \$1,000,000 per occurrence with a \$2,000,000 general aggregate limit and a \$2,000,000 products completed operations limit. The General Liability insurance shall include coverage for bodily injury, personal injury, broad form property damage, blanket contractual liability, products/completed operations, and \$1,000,000 liquor legal liability if alcohol is served or sold at, or during, the Event.

The General Liability Additional Insured endorsement shall include coverage for bodily injury, personal injury, broad form property damage, contractual liability, premises liability and products/completed operations liability.

Vehicle Liability Insurance: Vehicle Liability insurance with a combined single limit of \$1,000,000 each occurrence with respect to SPONSOR's owned, hired and non-owned vehicles.

Workers' Compensation Insurance: Statutory Worker's Compensation insurance and Employer's Liability insurance of \$1,000,000 each accident, \$1,000,000 each disease and \$1,000,000 disease policy limits.

D. SUPPLEMENTARY CONDITIONS

Objectionable Uses or Persons: Any use of COUNTY property in violation of any law or ordinance of the COUNTY, State of Arizona or United States or, at the COUNTY's sole discretion, that is not in the COUNTY's best interest, may, at the COUNTY's sole discretion, constitute a material breach of this Agreement and be grounds for its immediate termination, cancellation or suspension. Any person whose acts, behavior or conduct is disorderly or disruptive may be refused entrance to, or be ejected from, the COUNTY's property. The SPONSOR shall defend, indemnify and hold harmless the COUNTY, its officials and employees from such refusal or ejection to the fullest extent

and scope of the indemnity and insurance requirements in paragraphs B and C of this Agreement.

County Property: This Agreement is for COUNTY property and shall not be construed as an authorization for use of adjacent private or public property, grounds or land or any other area where a separate agreement or permit may be required. SPONSOR shall be responsible for obtaining all necessary agreements, permits or insurance required by any federal, state, municipal or other governmental or private entity.

Damage to County Property: SPONSOR will promptly compensate or reimburse COUNTY the full amount of any damage to, or loss of use of, COUNTY buildings, facilities, grounds, lands, water or property caused by SPONSOR, its officers, officials, employees, members, guests, invitees, or agents. Compensation or reimbursement to the COUNTY shall also include, but not be limited to, restoration, clean-up, abatement, remedial action, legal fees and expenses or fines.

Damage to Sponsor Property: The COUNTY shall not be responsible for loss of, damage to, or loss of use of, tangible or intangible property of SPONSOR, its officers, officials, employees, members, guests, invitees or agents or Event participants or spectators.

Inclement Weather or Emergencies: At the COUNTY's sole discretion, the COUNTY may close any COUNTY property or terminate or cancel any Event due to inclement weather or any other emergency situation.

Loss of Privileges: Loss of privileges authorized by this Agreement by COUNTY closure, termination, cancellation or suspension is not compensable to the SPONSOR.

Transfer: This Agreement, its requirements, terms and conditions are not transferable.

Exclusivity: This Agreement is not exclusive unless otherwise stated in the Agreement. The COUNTY reserves the right to use or allow others to use any part the COUNTY property pertaining to this Agreement. The SPONSOR agrees to allow others of the public free and unrestricted access to, and use of, the COUNTY property at all times for all lawful purposes.

County Rules and Regulations: Upon issuance, this Agreement authorizes the SPONSOR to use or occupy COUNTY property, subject to the terms and conditions outlined within COUNTY rules, regulations, laws, ordinances or the COUNTY approved authorization or use plan for this Agreement. It is the SPONSOR's responsibility to be familiar with and to understand all applicable COUNTY rules, regulations, laws, or ordinances.

Obligations of the Sponsor: The obligations of the SPONSOR under this Agreement are not contingent upon the COUNTY to inspect any SPONSOR equipment, food, beverages, activity or operations.

Liability Waiver: In a form acceptable to the COUNTY, the COUNTY, at its sole discretion, may require executed statements of fitness for activity and/or waivers of liability for or from each SPONSOR officer or member or Event participant, guest or spectator.

Report to County: The SPONSOR shall immediately report to the COUNTY any accident, event, incident or occurrence that results, or may result, in bodily injury, death or property damage.

Records Retention: The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agree that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

Public Records Law: Notwithstanding any other provision of the Agreement, the parties understand that the COUNTY is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 *et. seq.*

Jurisdiction and Venue: This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise COUNTY, Arizona.

E. RELATIONSHIP OF THE PARTIES

The parties intend and understand that pursuant to this agreement, the COUNTY is an independent supplier of services to the SPONSOR, limited to a temporary license to use the COUNTY PREMISES. No officer, employee or agent of the COUNTY or the COUNTY itself, shall be deemed or considered an employee, partner, joint venturer, agent, associate, or a participant with SPONSOR in any respect regarding SPONSOR's conduct of the EVENT. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Except as COUNTY enforcement statutes, regulations or procedures which may affect COUNTY rendering of services hereunder may require, the COUNTY shall not in any manner, participate in or share in any profit or proceeds arising from SPONSOR's conduct of the EVENT. SPONSOR will be solely and entirely responsible for the acts of the SPONSOR's event. No officer, employee or agent of one party shall be empowered to bind or obligate the other party unless specifically authorized by mutual written consent of the parties.

F. TERM OF AGREEMENT

1. This agreement shall be in full force and effect from the date of its execution and until 5 p.m. on the day following the completion of the EVENT or until cessation of all of SPONSOR's obligations to the COUNTY under this Agreement, whichever is later, unless otherwise terminated as provided in this Agreement.

2. SPONSOR shall be permitted to begin setting up portable toilets and necessary signage at 7 a.m. on Friday, October 20, 2017 and shall have removed all such toilets and signage prior to 4 p.m. on Sunday, October 22, 2017.

G. EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective upon approval by the Cochise County Board of Supervisors and upon the signing of the Agreement by the Chairman of the Board. In the event that the Board of Supervisors fails or refuses to approve this Agreement, it shall be null and void and have no effect whatsoever.

H. TERMINATION OF AGREEMENT

Either party upon thirty (30) days written notice of such intent may terminate this Agreement. Such termination shall not relieve the SPONSOR of liability under this Agreement for the effective term prior to this termination. This Agreement may also be subject to termination pursuant to A.R.S. 38-511.

I. ASSIGNMENT

Neither party shall assign any rights or duties under this Agreement without the express written consent of the other party. Any assignment in violation of this provision will automatically terminate this Agreement.

J. WAIVER

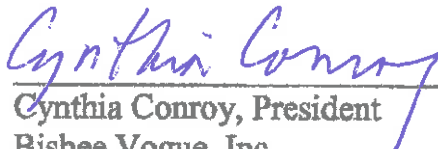
The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the party's subsequent rights and obligations under that provision. Waiver by either party of the breach of any provision hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of such provision itself.

K. ENTIRE AGREEMENT

This document constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings, agreements and all other communications between the parties. It may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each party.

IN WITNESS WHEREOF, the COUNTY has caused this instrument to be executed by the Chairman of the Board of Supervisors and attested to by the Clerk of said Board, and SPONSOR has caused this instrument to be executed by its duly authorized representative.

APPROVED:



Cynthia Conroy, President
Bisbee Vogue, Inc.

8/31/17

Date

APPROVED:

Ann English, Chairperson
Cochise COUNTY Board of Supervisors

Date

ATTEST:

Arlethe G. Rios
Clerk of the Board

Date

APPROVED AS TO FORM:



Elda E. Orduño
Civil Deputy COUNTY Attorney

9/14/17

Date